

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

JUDGE PHILIP MARTINEZ
W.D. OF TEXAS

UNITED STATES OF AMERICA,)
Ex rel. Dr. Man Tai Lam,)
Dr. William Meshel,)
Plaintiffs,)
v.) Civil Action No.
Tenet Healthcare Corp.,)
Defendants.)

EP02CA0503

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF UNDER FALSE
CLAIMS ACT**

Filed in Camera and Under Seal pursuant to 31 U.S.C. 3730(b)(2)

INTRODUCTION

1. This is a complaint for damages, and injunctive relief authorized and instituted pursuant to the False Claims Act, 31 U.S.C. 3729 et seq.

2. This lawsuit is brought to prevent further injury and damage to the treasury of the United States of America and to recover damages for such damage as has already occurred. Damages are sought by the relators, Drs. Man Tai Lam, and William Meshel, in behalf of the United States of America, and for themselves as the original source of the information disclosing the fraud demonstrated herein.

Jury Demand

3. A jury is hereby demanded.

Jurisdiction and Venue

4. This action is brought for a declaratory judgment, injunctive relief; and damages, pursuant to 28 U.S.C. Sections 2201 and 2202. This Court has jurisdiction to hear the Plaintiff's claims pursuant to 28 U.S.C. Section 3730(b) in that the claims for relief in this action are

brought in the name of the United States Government.

5. Venue is proper pursuant to 28 U.S.C. 1331 (a) in that many of the defendants reside in this district, and although Tenet Healthcare Corporation does business nationally, it does business in El Paso County, Texas.

Parties

6. The Plaintiffs are licensed medical doctors, licensed to and practicing in the City and County of El Paso, Texas.

7. Tenet Healthcare Corporation operates hospitals and other health care facilities throughout the State of Texas and in the United States.

8. As required under the False Claims Act, 31 U.S.C. 3730(a)(2), the Relator has provided the Attorney General of the United States and the United States Attorney for the Western District of Texas with a statement of all material evidence and information related to the complaint. This disclosure statement supports the existence of charging for fraud and the reliance by the United States government on invoices for said medical tests and medical procedures.

Factual Allegations

9. Dr. Man Tai Lam is actively engaged in the practice of medicine in the City and County of El Paso, Texas. In his practice, Dr. Lam has gained knowledge relating to the practices utilized by Tenet Healthcare Corporation.

10. Dr. William Meshel is actively engaged in the practice of medicine in the City and County of El Paso, Texas. In his practice, Dr. Meshel has gained knowledge relating to the practices utilized by Tenet Healthcare Corporation.

11. Tenet Healthcare Corporation operates two hospitals in El Paso, Texas:

Providence Memorial Hospital and Sierra Medical Center.

12. Drs. Lam and Meshel have learned that Defendant engages in fraudulent Medicare Cost Reports.

13. Specifically, Defendant's Medicare cost reports incorporate the costs billed for payment, substantial overpayments for "Medical Directors fees" that are actually a contrived mechanism to pay influential medical practitioners in the El Paso area to influence their referral patterns and utilization of the Tenet hospitals Providence Memorial Hospital and Sierra Medical Center.

14. Drs. Lam and Meshel have also learned that Defendant engages in kickbacks.

15. Specifically, the Defendant pays Medical Director's fees. These fees are paid in the form of paid office rent and utilities for the "Medical Directors", and free office space "Medical Directors.

16. Tenet "buys doctors" by paying them off with large medical director's fees and they do nothing for the money except refer patients to the hospitals run by Defendant.

17. Drs. Lam and Meshel have further learned that Defendant overbills Medicare and Medicaid.

18. Specifically, Defendant bills substantially higher charges than most hospitals for certain diagnoses. Although hospitals get paid essentially the same amount for certain diagnoses by Medicare,

19. This payment for such long term stays at the hospitals operated by Defendant and the use of the inflated higher diagnoses number allows Defendant to get substantially higher reimbursement on those patients that stay longer than 21 days. This is called the "outlier charge." Defendant's outlier charge is many times the percentage of total revenue that comparable

hospitals receive.

20. The amount Medicare pays Defendant relies on the hospitals inflated pricing as part of its formula for re-imbursement. For example for the DRG for the common diagnosis of Congestive Heart Failure or Pneumonia, Sierra charges 2 to 3 times higher than even such hospitals as the Mayo Clinic.

21. The records, which will disclose the fraud engaged in by Defendant are located at the Providence Memorial Hospital, 2001 Oregon, El Paso, Texas 79902, and Sierra Medical Center, 1625 Medical Center Drive, El Paso, Texas 79902, and consist of bills to the Medicare, Medicaid, and Federal Workers' Compensation authorized fiscal agents, billing records, and billing sheets.

22. Records disclosing the fraud may also be located at the individual referring doctors or "Medical Directors" places of practice.

23. At all times material hereto, the defendant knew, or were grossly negligent or reckless in not knowing that the ordering of repetitive and unnecessary medical tests and procedures were illegal and resulted in payment by the United States of America, Medicare and Medicaid, Federal Workers' Compensation departments which should not have been made.

24. Upon information and belief, defendant knowingly, as that term is defined by 32 U.S.C. 3729(b), filed, or caused to be filed, with the Federal Government applications for the payment of the United States Government funds, and upon information and belief, caused monies of the Untied States Government to be paid, to themselves when they ordered repetitive and unnecessary medical procedures and tests.

FIRST CLAIM
Violation of 31 U.S.C. 3729(a)(1)

25. The relators repeat the allegations of paragraphs 1-24 contained herein.

26. Upon information and belief, defendants presented, or caused to filed, with the Federal Government applications for the payment of the United States Government funds, with the knowledge of their falsity, or with grossly negligent or reckless disregard to facts and conditions that would indicate, that said claims were inaccurate or inappropriate and false and caused payments for said claims to be made by the United States Government.

27. By reason of the violation of 31 U.S.C. 3729(a)(1), Defendants have knowingly or recklessly damaged the United States Government in an as of yet undetermined amount.

SECOND CLAIM
Violation of 31 U.S.C. 3729(a)(2)

28. The relators repeat the allegations of paragraphs 1-27 contained herein.

29. Upon information and belief, defendants presented, or caused to filed, with the Federal Government applications for the payment of the United States Government funds, with the knowledge of their falsity, or with grossly negligent or reckless disregard to facts and conditions that would indicate, that said claims were inaccurate or inappropriate and false and caused payments for said claims to be made by the United States Government.

30. By reason of the violation of 31 U.S.C. 3729(a)(2), Defendants have knowingly or recklessly damaged the United States Government in an as of yet undetermined amount.

THIRD CLAIM
Violation of 31 U.S.C. 3729(a)(3)

31. The relators repeat the allegations of paragraphs 1-30 contained herein.

32. Upon information and belief, defendants presented, or caused to filed, with the

Federal Government applications for the payment of the United States Government funds, with the knowledge of their falsity, or with grossly negligent or reckless disregard to facts and conditions that would indicate, that said claims were inaccurate or inappropriate and false and caused payments for said claims to be made by the United States Government.

33. By reason of the violation of 31 U.S.C. 3729(a)(3), Defendants have knowingly or recklessly damaged the United States Government in an as of yet undetermined amount.

WHEREFORE, Plaintiff requests that Defendants be cited to appear and answer, and that on final trial, Plaintiff have:

- A. A declaratory judgment, declaring Defendants' acts herein complained of to be in violation of the False Claims Act, 31 U.S.C. 3729 et seq;
- B. Judgment in an amount, presently indeterminable, upon the First, Second and Third Claims, for violation of 31 U.S.C. 3729(a)(1), (2), and (3) and the sum duly trebled in addition to a fine of not less than \$5,000 per violation and not more than \$10, 000.00, together with attorney's fees and costs; and
- C. Such further and reasonable relief as this Court may deem just in these premises.

Respectfully submitted,

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